

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

UNITED STATES OF AMERICA and
THE STATE OF WISCONSIN,

Plaintiffs,

v.

Case No. 10-CV-00910-WCG

NCR CORPORATION, et al.

Defendants.

**CBC COATING, INC.'S STATEMENT OF ADDITIONAL FACTS OPPOSING
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendant CBC Coating, Inc., through its undersigned counsel, pursuant to Civil L.R. 56(b)(2)(B)(ii), submit this Statement of Additional Facts Opposing Plaintiffs' Motion for Partial Summary Judgment (Dkt. 549).

1. CBC Coating, Inc. ("CBC") is a Wisconsin Corporation with its principal place of business in Appleton, Wisconsin, and is the successor to Riverside Paper Corporation ("Riverside Paper" or "Riverside"). Declaration of Thomas Metivier in Response to Plaintiffs' Motion for Partial Summary Judgment ("Metivier Decl.") ¶ 2.

2. CBC (formerly known as Riverside Paper Corporation) owned and operated a paper production facility, known as the Kerwin Mill or Kerwin, at 800 S. Lawe St. in Appleton, Wisconsin from at least 1954 to 2005. Operation of Kerwin Mill ceased in 2005. Metivier Decl. ¶ 3.

3. The precise date of Riverside Paper's first use of NCR Broke is uncertain. In 1999, Riverside's secondary fiber purchaser and its chief chemist during the relevant time period

estimated that it was sometime between January and June 1971 that Riverside first learned to use NCR carbonless copy paper broke in its secondary fiber processing and thus began purchasing about 24 tons a month. Declaration of Susan E. Lovern in Response to Plaintiffs' Motion for Partial Summary Judgment ("Lovern Decl.") Exs. 3, 4 [1999 Affidavits of George Holzkecht and Harold Bressers]. Another former employee of Riverside Paper, Milo Burzynski, testified that Riverside may have first used NCR CCP broke about six months after he had started working as an assistant laboratory technician on May 24, 1971, which would place the start of Riverside's usage of NCR broke many months after NCR discontinued the use of PCBs in its carbonless copy paper in April 1971. Lovern Decl., Ex. 2 [M. Burzynski Dep. at 38:4-39:20, 61:4-66:4].

4. Riverside's processes differed from those of a traditional deink mill and Riverside's secondary fiber grades would not have contained PCB-containing carbonless copy paper or any significant PCBs. Declaration of James L. Wise ("Wise Decl.") ¶¶ 5-11, Exs. 2, 3 [September 28, 2012 Expert Report of James L. Wise and October 19, 2012 Expert Rebuttal Report of James L. Wise].

5. In December 1972, Riverside Paper connected most of its industrial wastewater, including its most concentrated process effluents, to the Appleton POTW system, in timely compliance with a WDNR Order. Lovern Decl., Exs. 5, 6 [November 29, 1972 WDNR Report for Enforcement Conference and Investigation to Determine Compliance with Water Pollution Abatement Orders, December 26, 1972 Letter from City of Appleton]. Consistent with the WDNR order, effluent from Riverside's in-plant savealls continued to be discharged to the Fox River. Lovern Decl., Ex. 5.

6. Following Riverside Paper's hookup to the Appleton POTW in December 1972, Riverside's WDNR-issued wastewater discharge permits allowed for the continued discharge to the Lower Fox River of Riverside's outfall 001 (boiler blow down, cooling water and drain water) and outfall 002 (clear whitewater from save-alls). Outfalls 003 and 004 discharged to the Appleton POTW. Lovern Decl. Ex. 7 [Riverside's Discharge Permits at NCRFOX0055606, NCRFOX0055609], Ex. 1 [G. Holzkecht Dep. at 157:11 – 158:15].

7. In 1974, Riverside began testing its effluent for PCBs as required by the WDNR. Lovern Decl. Ex. 1 [G. Holzkecht Dep. at 155:25 -156:23]; Spector Decl. (Dkt. 552-1) Ex. 18 [PCB Synopsis, CBCFOX00003598, Holzkecht Dep. Ex. 510-L.]

8. Riverside's PCB effluent testing conducted at outfalls 001 and 002 to the Lower Fox River from 1974 to 1980 showed no detection of PCBs ever going to the River, other than a December 1980 detect which was and is understood to have been an analytical or typographical error. Lovern Decl. Ex. 1 [Holzkecht Dep. at 155:25-156:12 discussing PCB Synopsis CBCFOX00003598]; Spector Decl. (Dkt. 552-1) Ex.18 [PCB Synopsis, CBCFOX00003598-99, noting 12/4/1980 result as suspected typographical error], Ex. 19 [WDNR Tech Memo 2d at CBCFOX00003889 questioning the December 4, 1980 data as a typo]; Lovern Decl. Ex. 8 [Nov. 7, 1984 Letter from Kerwin Paper Company (Riverside's paper mill) to WDNR].

9. Riverside's PCB effluent testing conducted at outfalls 003 and 004 to the City of Appleton POTW from 1974 to 1980 showed only two detects of PCBs, one in December 1974 at 2.2 parts per billion ("ppb") and one in December 1979 at 3.0 ppb. Spector Decl. (Dkt. 552-1) Ex. 18 [PCB Synopsis, CBCFOX00003598-99], Exs. 22, 23 [Riverside's Lab Test Reports for December 1974 and December 1979]. A table of data from the State Lab of Hygiene set forth in Tech Memo 2d indicates an additional detect of 2.6 ppb going to the POTW in May 1974,

Spector Decl. (Dkt. 552-1), Ex. 19 at C-10, but Riverside is unaware of any laboratory test reports substantiating this alleged detect.

10. Assuming that Riverside Paper discharged PCBs to the APOTW and that the APOTW discharged any PCBs from Riverside Paper to the Lower Fox River, a reasonable if not high approximation of the theoretical mass of Riverside Paper PCBs that could have been discharged from the APOTW to the Fox River is calculable and would have constituted well less than 1 ppm of all river sediments wherever those sediments were deposited. Declaration of Dale J. Buser (“Buser Decl.”) ¶¶ 9, 12, 13, Ex. 2 [September 28, 2012 Expert Report of Dale J. Buser].

Dated this 7th day of November, 2012.

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